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11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14

15 GRACIELA HERRERA; and RUBEN  
ORDAZ,

16 Plaintiffs,

17 vs.

18 CITY OF LOS ANGELES;  
19 ALEJANDRO DOWNEY; and DOES 2-  
10, inclusive,

20 Defendants.  
21

Case No. CV 16-02719 DSF (SKx)

**FIRST AMENDED COMPLAINT  
FOR DAMAGES**

1. Unreasonable Search and Seizure—  
Detention and Arrest (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—  
Excessive Force (42 U.S.C. § 1983)
3. Substantive Due Process—(42  
U.S.C. § 1983)
4. Municipal Liability for  
Unconstitutional Custom, Practice,  
or Policy (42 U.S.C. § 1983)
5. Battery (Wrongful Death)
6. Negligence (Wrongful Death)
7. Violation of Bane Act (Cal. Civil  
Code § 52.1)

**DEMAND FOR JURY TRIAL**

1                                   **FIRST AMENDED COMPLAINT FOR DAMAGES**

2

3           Plaintiff GRACIELA HERRERA and RUBEN ORDAZ (“PLAINTIFFS”) for

4 their complaint against Defendants CITY OF LOS ANGELES, ALEJANDRO

5 DOWNEY and Does 2-10, inclusive, allege as follows:

6

7                                   **INTRODUCTION**

8           1.     This civil rights action seeks compensatory and punitive damages from

9 Defendants for violating various rights under the United States Constitution and

10 state law in connection with the fatal police shooting of the decedent, Ruben

11 Herrera.

12

13                                   **PARTIES**

14           2.     At all relevant times, Ruben Herrera (“DECEDENT”) was an

15 individual residing in County of Los Angeles, California.

16           3.     Plaintiff GRACIELA HERRERA is an individual residing in County of

17 Los Angeles, California, and is the natural mother to DECEDENT. GRACIELA

18 HERRERA sues both in her individual capacity as the mother of DECEDENT and

19 in a representative capacity as successor-in-interest to DECEDENT. GRACIELA

20 HERRERA seeks both survival and wrongful death damages under federal and state

21 law.

22           4.     Plaintiff RUBEN ORDAZ is an individual residing in County of

23 Sacramento, California, and is the natural father to DECEDENT. RUBEN ORDAZ

24 sues both in his individual capacity as the father of DECEDENT and in a

25 representative capacity as successor-in-interest to DECEDENT. RUBEN ORDAZ

26 seeks both survival and wrongful death damages under federal and state law.

27           5.     At all relevant times, Defendant CITY OF LOS ANGELES (“CITY”)

28 is and was a duly organized public entity, form unknown, existing under the laws of

1 the State of California. At all relevant times, CITY was the employer of Defendants  
2 ALEJANDRO DOWNEY and DOES 2-4, who were CITY Police officers, DOES  
3 5-6, who were CITY police officers supervisory officers, and DOES 7-10, who  
4 were managerial, supervisory, and policymaking employees of the CITY Police  
5 Department. On information and belief, at all relevant times, ALEJANDRO  
6 DOWNEY and DOES 2-10 were residents of County of Los Angeles, California.  
7 ALEJANDRO DOWNEY and DOES 2-10 are sued in their individual capacity for  
8 damages only.

9       6. At all relevant times, Defendants ALEJANDRO DOWNEY and DOES  
10 2-10 were duly authorized employees and agents of CITY, who were acting under  
11 color of law within the course and scope of their respective duties as police officers  
12 and with the complete authority and ratification of their principal, Defendant CITY.

13       7. At all relevant times, Defendants ALEJANDRO DOWNEY and DOES  
14 2-10 were duly appointed officers and/or employees or agents of CITY, subject to  
15 oversight and supervision by CITY's elected and non-elected officials.

16       8. In doing the acts and failing and omitting to act as hereinafter  
17 described, Defendants ALEJANDRO DOWNEY and DOES 2-10 were acting on  
18 the implied and actual permission and consent of CITY.

19       9. At all times mentioned herein, each and every CITY defendant was the  
20 agent of each and every other CITY defendant and had the legal duty to oversee and  
21 supervise the hiring, conduct and employment of each and every CITY defendant.

22       10. The true names of defendants DOES 2 through 10, inclusive, are  
23 unknown to Plaintiffs, who therefore sue these defendants by such fictitious names.  
24 Plaintiffs will seek leave to amend this complaint to show the true names and  
25 capacities of these defendants when they have been ascertained. Each of the  
26 fictitious named defendants is responsible in some manner for the conduct and  
27 liabilities alleged herein.  
28

1           11. On February 26, 2016, Plaintiffs filed comprehensive and timely claims  
2 for damages with CITY pursuant to applicable sections of the California  
3 Government Code.

4           12. On March 15, 2016, CITY rejected Plaintiffs' claims for damages.

5                           **JURISDICTION AND VENUE**

6           13. This civil action is brought for the redress of alleged deprivations of  
7 constitutional rights as protected by 42 U.S.C. §§ 1983, 1985, 1986, 1988, and the  
8 Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction  
9 is founded on 28 U.S.C. §§ 1331, 1343, and 1367.

10           14. Venue is proper in this Court under 28 U.S.C. § 1391(b), because  
11 Defendants reside in, and all incidents, events, and occurrences giving rise to this  
12 action occurred in, the County of Los Angeles, California.

13  
14                           **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

15           15. Plaintiffs repeat and reallege each and every allegation in paragraphs 1  
16 through 14 of this Complaint with the same force and effect as if fully set forth  
17 herein.

18           16. On or about December 19, 2015, DECEDENT was on his property in  
19 front of his home near the 1600 block of West 206<sup>th</sup> Street, in the City of Torrance,  
20 California.

21           17. While on his property and in front of his apartment, officers from the  
22 Los Angeles Police Department ("LAPD"), made contact with DECEDENT  
23 regarding a call for service they received about some people throwing bottles.  
24 DECEDENT had not been involved in throwing any bottles and the involved  
25 officers had no information that DECEDENT was in fact involved in the throwing  
26 any bottles.

1           18. After initially making contact with the DECEDENT, the involved  
2 officers used excessive force against DECEDENT, including punching him and  
3 slamming him to the ground.

4           19. While the involved offices were taking DECEDENT into custody,  
5 GRACIELA HERRERA exited from inside her apartment and informed the  
6 involved officers that DECEDENT suffered from mental illness.

7           20. As a result of the encounter with DECEDENT and the involved LAPD  
8 officers, paramedics were summoned to the scene to treat DECEDENT. After  
9 receiving treatment, DECEDENT was transported by ambulance to Harbor-UCLA  
10 Medical Center in Torrance, California.

11           21. Prior to DECEDENT being transported from is home to Harbor-UCLA  
12 Medical Center, the involved officers were on notice that DECEDENT suffered  
13 from a pre-existing mental condition, specifically bipolar.

14           22. After being transported to Harbor-UCLA Medical Center, DECEDENT  
15 was fatally shot by ALEJANDRO DOWNEY of the LAPD while DECEDENT was  
16 still inside of the hospital.

17           23. At the time of the shooting DECEDENT did not pose an immediate  
18 threat of death and serious bodily injury, to ALEJANDRO DOWNEY or anyone  
19 else and there were less than lethal options available to ALEJANDRO DOWNEY  
20 and the involved officers. Further, DECEDENT did not cause serious bodily injury  
21 to ALEJANDRO DOWNEY, or anyone else, prior to the shooting.

22           24. As a result of the foregoing, DECEDENT suffered intense physical and  
23 emotional pain, anguish, distress and despair, and death, including the loss of  
24 enjoyment of his life.

25           25. On information and belief, Defendants had no information that  
26 DECEDENT had committed a felony.

27  
28

**FIRST CLAIM FOR RELIEF**

**Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)**

(Against Defendant ALEJANDRO DOWNEY)

26. PLAINTIFFS repeat and reallege each and every allegation in paragraphs 1 through 25 of this Complaint with the same force and effect as if fully set forth herein.

27. Defendant ALEJANDRO DOWNEY caused DECEDENT to be detained and arrested in violation of his right to be secure in his person against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

28. The DECEDENT was detained without reasonable suspicion and arrested without probable cause.

29. The conduct of ALEJANDRO DOWNEY was willful, wanton, malicious, and done with reckless disregard for the rights and safety of DECEDENT and therefore warrants the imposition of exemplary and punitive damages as to Defendant ALEJANDRO DOWNEY.

30. PLAINTIFFS seek damages as successor-in-interest to DECEDENT.

31. PLAINTIFFS also seek attorney fees under this claim.

**SECOND CLAIM FOR RELIEF**

**Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)**

(Against Defendant ALEJANDRO DOWNEY)

32. PLAINTIFFS repeat and reallege each and every allegation in paragraphs 1 through 31 of this Complaint with the same force and effect as if fully set forth herein.

33. ALEJANDRO DOWNEY's unjustified shooting deprived DECEDENT of his right to be secure in his persons against unreasonable searches

1 and seizures as guaranteed to DECEDENT under the Fourth Amendment to the  
2 United States Constitution and applied to state actors by the Fourteenth Amendment.

3 34. The unreasonable use of force by Defendant ALEJANDRO DOWNEY  
4 deprived the DECEDENT of his right to be secure in his person against  
5 unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth  
6 Amendment to the United States Constitution and applied to state actors by the  
7 Fourteenth Amendment.

8 35. As a result, DECEDENT suffered extreme pain and suffering and  
9 eventually suffered a loss of life and of earning capacity. PLAINTIFFS have also  
10 been deprived of the life-long love, companionship, comfort, support, society, care,  
11 and sustenance of DECEDENT, and will continue to be so deprived for the  
12 remainder of her natural life. PLAINTIFFS are also claiming funeral and burial  
13 expenses and a loss of financial support.

14 36. This use of deadly force was excessive and unreasonable under the  
15 circumstances, especially since DECEDENT was not an immediate threat of death  
16 and serious bodily injury to ALEJANDRO DOWNEY or anyone else at the time of  
17 the shooting. Further, DECEDENT did not cause serious bodily injury to  
18 ALEJANDRO DOWNEY or anyone else prior to being fatally shot. Defendants'  
19 actions thus deprived DECEDENT of his right to be free from unreasonable  
20 searches and seizures under the Fourth Amendment and applied to state actors by  
21 the Fourteenth Amendment.

22 37. The conduct of ALEJANDRO DOWNEY was willful, wanton,  
23 malicious, and done with reckless disregard for the rights and safety of DECEDENT  
24 and therefore warrants the imposition of exemplary and punitive damages as to  
25 Defendant ALEJANDRO DOWNEY.

26 38. PLAINTIFFS bring this claim as successor-in-interest to the  
27 DECEDENT, and seek both survival and wrongful death damages for the violation  
28 of DECEDENT's rights.



1 39. PLAINTIFFS also seek attorney fees under this claim.

2  
3 **THIRD CLAIM FOR RELIEF**

4 **Substantive Due Process (42 U.S.C. § 1983)**

5 (Against Defendant ALEJANDRO DOWNEY)

6 40. PLAINTIFFS repeats and realleges each and every allegation in  
7 paragraphs 1 through 41 of this Complaint with the same force and effect as if fully  
8 set forth herein.

9 41. PLAINTIFF had a cognizable interest under the Due Process Clause of  
10 the Fourteenth Amendment of the United States Constitution to be free from state  
11 actions that deprive her of life, liberty, or property in such a manner as to shock the  
12 conscience, including but not limited to, unwarranted state interference in Plaintiff's  
13 familial relationship with her son, DECEDENT.

14 42. DECEDENT had a cognizable interest under the Due Process Clause of  
15 the Fourteenth Amendment of the United States Constitution to be free from state  
16 actions that deprive him of his right to life, liberty, or property in such a manner as  
17 to shock the conscience.

18 43. As a result of the excessive force by DOE 1, and failure of DOE 2 to  
19 intervene, DECEDENT died. PLAINTIFF was thereby deprived of her  
20 constitutional right of familial relationship with DECEDENT.

21 44. Does 1-2, acting under color of state law, thus violated the Fourteenth  
22 Amendment rights of PLAINTIFF to be free from unwarranted interference with  
23 their familial relationship with DECEDENT.

24 45. The aforementioned actions of DOES 1-2, along with other  
25 undiscovered conduct, shock the conscience, in that they acted with deliberate  
26 indifference to the constitutional rights of DECEDENT and PLAINTIFF, and with  
27 purpose to harm unrelated to any legitimate law enforcement objective.  
28



1           46. Defendants DOES 1-2, acting under color of state law, thus violated the  
2 Fourteenth Amendment rights of DECEDENT and PLAINTIFF.

3           47. As a direct and proximate cause of the acts of DOES 1-2, DECEDENT  
4 experienced severe pain and suffering and lost his life and earning capacity.  
5 PLAINTIFF suffered extreme and severe mental anguish and pain and have been  
6 injured in mind and body. PLAINTIFF has also been deprived of the life-long love,  
7 companionship, comfort, support, society, care and sustenance of DECEDENT, and  
8 will continue to be so deprived for the remainder of her natural life. PLAINTIFF is  
9 also claiming funeral and burial expenses and a loss of financial support.

10           48. As a result of the conduct of Does 1-2, they are liable for  
11 DECEDENT'S injuries, either because they were integral participants in the denial  
12 of due process, or because they failed to intervene to prevent these violations.

13           49. The conduct of DOES 1-2 was willful, wanton, malicious, and done  
14 with reckless disregard for the rights and safety of DECEDENT and PLAINTIFF  
15 and therefore warrants the imposition of exemplary and punitive damages as to  
16 Defendant DOES 1-2.

17           50. PLAINTIFF brings this claim individually and as a successors-in-  
18 interest to DECEDENT, and seek both survival and wrongful death damages for the  
19 violation of both PLAINTIFF's and DECEDENT's rights.

20           51. PLAINTIFF also seek attorney fees under this claim.  
21

#### 22                           **FOURTH CLAIM FOR RELIEF**

#### 23           **Municipal Liability for Unconstitutional Custom or Policy (42 U.S.C. § 1983)**

24                           (Against Defendants DOES 5-10 and CITY)

25           52. PLAINTIFF repeats and realleges each and every allegation in  
26 paragraphs 1 through 53 of this Complaint with the same force and effect as if fully  
27 set forth herein.  
28

1           53. On information and belief Defendant DOES 1-2's shooting of  
2 DECEDENT, who was shot at the hospital after he just finished being treated there,  
3 who had not caused serious bodily injury to anyone prior to being fatally shot and  
4 who was not an immediate threat of death or serious bodily injury at the time of the  
5 shooting, was found to be within CITY Police Department policy.

6           54. On information and belief Defendant DOES 1-2's shooting of  
7 DECEDENT, who was shot at the hospital after he just finished being treated there,  
8 who had not caused serious bodily injury to anyone prior to being fatally shot and  
9 who was not an immediate threat of death or serious bodily injury at the time of the  
10 shooting, was ratified by CITY Police Department supervisory officers.

11           55. On information and belief Defendant Does 1-2 were not disciplined for  
12 fatally shooting DECEDENT, who was shot at the hospital after he just finished  
13 being treated there, who had not caused serious bodily injury to anyone prior to  
14 being fatally shot and who was not an immediate threat of death or serious bodily  
15 injury at the time of the shooting.

16           56. In 2015 alone, there were 21 officer-involved shootings involving the  
17 LAPD. On information and belief, the majority of, if not all of the 21 fatal officer-  
18 involved shootings which occurred in 2015, were found to be within CITY Police  
19 Department policy, were ratified by CITY Police Department supervisory officers  
20 and the involved officers were not disciplined.

21           57. On and for some time prior to December 19, 2015 (and continuing to  
22 the present date) Defendants DOES 5-10, deprived PLAINTIFF and DECEDENT of  
23 the rights and liberties secured to them by the Fourth and Fourteenth Amendments  
24 to the United States Constitution, in that said defendants and their supervising and  
25 managerial employees, agents, and representatives, acting with gross negligence and  
26 with reckless and deliberate indifference to the rights and liberties of the public in  
27 general, and of Plaintiffs and DECEDENT, and of persons in their class, situation  
28

1 and comparable position in particular, knowingly maintained, enforced and applied  
2 an official recognized custom, policy, and practice of:

- 3 (a) Employing and retaining as police officers and other personnel,  
4 including DOES 1-2, who Defendants DOES 5-10, at all times  
5 material herein knew or reasonably should have known had  
6 dangerous propensities for abusing their authority and for  
7 mistreating citizens by failing to follow written CITY Police  
8 Department's policies, including the use of excessive force;
- 9 (b) Of inadequately supervising, training, controlling, assigning, and  
10 disciplining CITY Police Officers, and other personnel,  
11 including DOES 1-2, who Defendants CITY knew or in the  
12 exercise of reasonable care should have known had the  
13 aforementioned propensities and character traits, including the  
14 propensity for violence and the use of excessive force;
- 15 (c) By maintaining grossly inadequate procedures for reporting,  
16 supervising, investigating, reviewing, disciplining and  
17 controlling the intentional misconduct by Defendant DOES 1-2,  
18 who are Police Officers of CITY;
- 19 (d) By failing to discipline CITY Police Officers' conduct, including  
20 but not limited to, unlawful detention and excessive force;
- 21 (e) By ratifying the intentional misconduct of Defendant DOES 1-2,  
22 who are Police Officers of CITY;
- 23 (f) By having and maintaining an unconstitutional policy, custom,  
24 and practice of detaining and arresting individuals without  
25 probable cause or reasonable suspicion, and using excessive  
26 force, including deadly force, which also is demonstrated by  
27 inadequate training regarding these subjects. The policies,  
28

1 customs, and practices of DOES 5-10, were done with a  
2 deliberate indifference to individuals' safety and rights;

3 (g) By failing to properly investigate claims of unlawful detention  
4 and excessive force by CITY Police Officers; and

5 (f) Of totally inadequate training with respect to dealing with  
6 individuals with mental illness.

7 58. By reason of the aforementioned policies and practices of Defendants  
8 DOES 5-10, DECEDENT was severely injured and subjected to pain and suffering  
9 and lost his life.

10 59. Defendants DOES 5-10, together with various other officials, whether  
11 named or unnamed, had either actual or constructive knowledge of the deficient  
12 policies, practices and customs alleged in the paragraphs above. Despite having  
13 knowledge as stated above these defendants condoned, tolerated and through actions  
14 and inactions thereby ratified such policies. Said defendants also acted with  
15 deliberate indifference to the foreseeable effects and consequences of these policies  
16 with respect to the constitutional rights of DECEDENT, PLAINTIFF, and other  
17 individuals similarly situated.

18 60. By perpetrating, sanctioning, tolerating and ratifying the outrageous  
19 conduct and other wrongful acts, Defendants DOES 5-10, acted with an intentional,  
20 reckless, and callous disregard for the life of DECEDENT, and DECEDENT's and  
21 PLAINTIFF's constitutional rights. Defendants DOES 5-10, each of their actions  
22 were willful, wanton, oppressive, malicious, fraudulent, and extremely offensive and  
23 unconscionable to any person of normal sensibilities.

24 61. Furthermore, the policies, practices, and customs implemented and  
25 maintained and still tolerated by Defendants DOES 5-10, were affirmatively linked  
26 to and were a significantly influential force behind the injuries of DECEDENT and  
27 PLAINTIFF.  
28

1           62. By reason of the aforementioned acts and omissions of Defendants  
2 DOES 5-10, Plaintiffs were caused to incur funeral and related burial expenses, and  
3 loss of financial support.

4           63. By reason of the aforementioned acts and omissions of Defendants  
5 DOES 5-10, PLAINTIFF has suffered loss of love, companionship, affection,  
6 comfort, care, society, and future support.

7           64. Accordingly, Defendants DOES 5-10, each are liable to PLAINTIFF  
8 for compensatory damages under 42 U.S.C. § 1983.

9           65. Plaintiffs seek wrongful death and survival damages under this claim.

10          66. Plaintiffs also seek attorney fees under this claim.

11  
12                                   **FIFTH CLAIM FOR RELIEF**

13                   **Battery (Cal. Govt. Code § 820 and California Common Law)**

14                                   (Wrongful Death)

15                                   (Against Defendant DOES 1-4 and CITY)

16          67. Plaintiffs repeat and reallege each and every allegation in paragraphs 1  
17 through 68 of this Complaint with the same force and effect as if fully set forth  
18 herein.

19          68. DOES 1-2, while working as a Police Officers for the CITY Police  
20 Department, and acting within the course and scope of their duties, intentionally  
21 shot DECEDENT. As a result of the actions of DOES 1-2, DECEDENT suffered  
22 severe pain and suffering and ultimately died from his injuries and lost earning  
23 capacity. DOES 1-2 had no legal justification for using force against DECEDENT  
24 and said defendants' use of force while carrying out their officer duties was an  
25 unreasonable use of force, especially since DECEDENT had just finished being  
26 treated at the hospital where he was shot at, DECEDENT had not inflicted serious  
27 bodily injury on anyone, including the involved officers, and DECEDENT was not  
28 an immediate threat of death or serious bodily injury at the time of the shooting.

1           69. As a direct and proximate result of defendants' conduct as alleged  
2 above, PLAINTIFF suffered extreme and severe mental anguish and pain and has  
3 been injured in mind and body. PLAINTIFF also has been deprived of the life-long  
4 love, companionship, comfort, support, society, care and sustenance of  
5 DECEDENT, and will continue to be so deprived for the remainder of her natural  
6 life. PLAINTIFF is claiming funeral and burial expenses and a loss of financial  
7 support.

8           70. CITY is vicariously liable for the wrongful acts of DOES 1-2 pursuant  
9 to section 815.2(a) of the California Government Code, which provides that a public  
10 entity is liable for the injuries caused by its employees within the scope of the  
11 employment if the employee's act would subject him or her to liability.

12           71. The conduct of DOES 1-2 was malicious, wanton, oppressive, and  
13 accomplished with a conscious disregard for the rights of PLAINTIFF and  
14 DECEDENT, entitling PLAINTIFF, individually and as successors-in-interest to  
15 DECEDENT, to an award of exemplary and punitive damages.

16           72. PLAINTIFF brings this claim as a successor-in-interest to  
17 DECEDENT, and seek wrongful death damages.

18           73. PLAINTIFF is seeking wrongful death damages under this claim.  
19

20                                   **SIXTH CLAIM FOR RELIEF**  
21                   **Negligence (Cal. Govt. Code § 820 and California Common Law)**  
22                                   **(Wrongful Death)**  
23                                   **(Against All Defendants)**

24           74. PLAINTIFF repeats and realleges each and every allegation in  
25 paragraphs 1 through 75 of this Complaint with the same force and effect as if fully  
26 set forth herein.

27           75. The actions and inactions of the Defendants were negligent and  
28 reckless, including but not limited to:

- 1 (a) the failure to properly and adequately assess the need to detain,
- 2 arrest, and use force or deadly force against DECEDENT;
- 3 (b) the negligent tactics and handling of the situation with
- 4 DECEDENT, including pre-shooting negligence;
- 5 (c) the negligent tactics and handling of the situation involving an
- 6 individual who is known to be suffering from a pre-existing
- 7 mental condition such as DECEDENT;
- 8 (d) the negligent detention, arrest, and use of force, including deadly
- 9 force, against DECEDENT;
- 10 (e) the failure to properly train and supervise employees, both
- 11 professional and non-professional, including DOES 1-2
- 12 (f) the failure to ensure that adequate numbers of employees with
- 13 appropriate education and training were available to meet the
- 14 needs of and protect the rights of DECEDENT; and
- 15 (g) the negligent handling of evidence and witnesses.

16 76. As a direct and proximate result of defendants' conduct as alleged  
 17 above, and other undiscovered negligent conduct, DECEDENT was caused to suffer  
 18 severe pain and suffering and ultimately died and lost earning capacity. Also as a  
 19 direct and proximate result of defendants' conduct as alleged above, PLAINTIFF  
 20 suffered extreme and severe mental anguish and pain and has been injured in mind  
 21 and body. PLAINTIFF also has been deprived of the life-long love, companionship,  
 22 comfort, support, society, care and sustenance of DECEDENT, and will continue to  
 23 be so deprived for the remainder of her natural life. PLAINTIFF is also claiming  
 24 funeral and burial expenses and a loss of financial support.

25 77. CITY is vicariously liable for the wrongful acts of DOES 1-10 pursuant  
 26 to section 815.2 of the California Government Code, which provides that a public  
 27 entity is liable for the injuries caused by its employees within the scope of the  
 28 employment if the employee's act would subject him or her to liability.



1 78. PLAINTIFF brings this claim as a successor-in-interest to  
2 DECEDENT, and seeks wrongful death damages.

3 79. PLAINTIFF is seeking wrongful death damages under this claim.  
4

5 **SEVENTH CLAIM FOR RELIEF**  
6 **Violation of Bane Act (Cal. Civil Code § 52.1)**  
7 **(Against All Defendants)**

8 80. PLAINTIFF repeats and realleges each and every allegation in  
9 paragraphs 1 through 81 of this Complaint with the same force and effect as if fully  
10 set forth herein.

11 81. California Civil Code, Section 52.1 (the Bane Act), prohibits any  
12 person from interfering with another person's exercise or enjoyment of his  
13 constitutional rights by threats, intimidation, or coercion.

14 82. Conduct that violates the Fourth Amendment violates the California  
15 Bane Act.<sup>1</sup>

16 83. Defendant DOES 1-2 use of deadly force was excessive and  
17 unreasonable under the circumstances, especially since DECEDENT had just been  
18 treated at the hospital where he was shot, DECEDENT did not inflict serious bodily  
19 injury on anyone prior to being shot and DECEDENT was not a threat of death or  
20 serious bodily injury at the time of the shooting. Defendants' actions thus deprived  
21 DECEDENT of his right to be free from unreasonable searches and seizures under  
22 the Fourth Amendment and applied to state actors by the Fourteenth Amendment.

23 84. DOES 1-2, while working as Police Officers for the CITY police  
24 department, and acting within the course and scope of their duties, interfered with or  
25 attempted to interfere with the rights of DECEDENT to be free from unreasonable  
26

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27 <sup>1</sup> See *Chaudhry v. City of Los Angeles*, 2014 WL 2030195, at \* 6 (9th Cir. May  
28 19, 2014) (citing *Cameron v. Craig*, 713 F.3d 1012, 1022 (9th Cir. 2013).

1 searches and seizures, to equal protection of the laws, to access to the courts, and to  
2 be free from state actions that shock the conscience, by threatening or committing  
3 acts involving violence, threats, coercion, or intimidation.

4 85. On information and belief, DECEDENT reasonably believed that if he  
5 exercised his rights, including his civil rights, DOES 1-2 would commit acts  
6 involving violence, threats, coercion, or intimidation against them or their property.

7 86. On information and belief Defendant DOES 1-2 injured DECEDENT  
8 to prevent him from exercising his rights or retaliated against DECEDENT for  
9 having exercised his rights.

10 87. DECEDENT was caused to suffer extreme pain and suffering and  
11 eventually suffered a loss of life and of earning capacity. PLAINTIFF has also been  
12 deprived of the life-long love, companionship, comfort, support, society, care, and  
13 sustenance of DECEDENT, and will continue to be so deprived for the remainder of  
14 her natural life. PLAINTIFF is also claiming funeral and burial expenses and a loss  
15 of financial support.

16 88. The conduct of DOES 1-2 was a substantial factor in causing the  
17 harms, losses, injuries, and damages of DECEDENT and PLAINTIFF.

18 89. CITY is vicariously liable for the wrongful acts of DOES 1-2 pursuant  
19 to section 815.2(a) of the California Government Code, which provides that a public  
20 entity is liable for the injuries caused by its employees within the scope of the  
21 employment if the employee's act would subject him or her to liability.

22 90. The conduct of DOES 1-2 was malicious, wanton, oppressive, and  
23 accomplished with a conscious disregard for the rights of DECEDENT entitling  
24 PLAINTIFF to an award of exemplary and punitive damages.

25 91. PLAINTIFF brings this claim as successor-in-interest to the  
26 DECEDENT, and seek both survival and wrongful death damages for the violation  
27 of DECEDENT's rights.

28 92. The PLAINTIFF also seeks attorney fees under this claim.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests entry of judgment in her favor and against Defendants City of Los Angeles, and Does 1-10, inclusive, as follows:

- A. For compensatory damages in excess of \$5,000,000, including both survival damages and wrongful death damages under federal and state law, in the amount to be proven at trial;
- B. For funeral and burial expenses, and loss of financial support;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable costs of this suit and attorneys' fees; and
- F. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: November 28, 2016      LAW OFFICES OF DALE K. GALIPO

Bv           /s/ Eric Valenzuela            
Dale K. Galipo  
Eric Valenzuela  
*Attorneys for Plaintiffs*

